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The parties have agreed that the following portions of the Record be printed as the single Appendix herein.

THE TRANSCRIPT OF RECORD
(Supreme Court of South Carolina)

The State of South Carolina
IN THE SUPREME COURT

IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY

THE HONORABLE CLARENCE E. SINGLETARY, RESIDENT JUDGE

RICHARD W. HUNT, INDIVIDUALLY AND REPRESENTING ALL OF THE TAXPAYERS OF THE STATE OF SOUTH CAROLINA, PLAINTIFF-APPELLANT,

v.

ROBERT E. McNAIR, GOVERNOR OF THE STATE OF SOUTH CAROLINA, GRADY L. PATTERSON, JR., TREASURER OF THE STATE OF SOUTH CAROLINA, JOHN H. MILLS, COMPTROLLER GENERAL OF THE STATE OF SOUTH CAROLINA, EDGAR A. BROWN, CHAIRMAN OF THE SENATE FINANCE COMMITTEE, ROBERT J. AYCOCK, CHAIRMAN OF THE WAYS AND MEANS COMMITTEE OF THE HOUSE OF REPRESENTATIVES, CONSTITUTING THE BUDGET AND CONTROL BOARD OF THE STATE OF SOUTH CAROLINA; DANIEL R. McLEOD, ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, AND BAPTIST COLLEGE AT CHARLESTON, AN ELEEMOSYNARY SOUTH CAROLINA CORPORATION, DEFENDANTS-RESPONDENTS.

STATEMENT OF FACTS

This action was instituted in the Charleston County Court of Common Pleas wherein the Plaintiff filed his Complaint on March 20th, 1970 for the purpose of (a) con-

testing the constitutionality of the Educational Facilities Authority Act (Section 25 of Act No. 349 of the Acts of the South Carolina General Assembly for the year 1969); and (b) in the event the Act should be held constitutional, prohibiting its use for the benefit of the Defendant Baptist College at Charleston and any other institution of higher learning in whole or in part under the direction or control of any church or church related organization. The Plaintiff is a taxpayer of the State of South Carolina and a resident of Charleston County and the Defendants include the members of the Budget and Control Board of the State of South Carolina, the Attorney General of the State of South Carolina and Baptist College at Charleston, an eleemosynary South Carolina corporation. Under the provisions of the Educational Facilities Authority Act (the Act) the Budget and Control Board of the State of South Carolina acts as the Educational Facilities Authority (the Authority) with the function of issuing revenue bonds pursuant to the Act for the benefit of participating institutions of higher learning.

Plaintiff sought and obtained an Order for the publication of a Notice of the institution of the action and affording any interested party an opportunity to intervene and raise additional objections. The Notice was duly published in the Columbia, South Carolina "The State" and in the Charleston, South Carolina "The News & Courier" on Wednesday, March 25th, 1970 and although more than twenty days have elapsed no person has sought to intervene, and an affidavit and order of default have been duly filed. Furthermore, the Defendant Baptist College at Charleston notified other private colleges in the State of the institution of this action and received from them numerous letters of support favoring the Act and its use in this instance.

The Baptist College at Charleston operates a four year college in Charleston County, South Carolina. The College has applied to the Authority for the issuance of revenue bonds pursuant to the Act in the amount of not exceeding $3,500,000.00 for the purpose of (a) paying off certain outstanding indebtedness of the Baptist College

Foundation incurred for the purpose of acquiring equipment and trailers utilized as a part of the College's educational plant and for the payment of which the College is responsible; (b) reimbursing in part the College's Current Fund for moneys advanced to the College's Plant Fund and used to purchase school equipment and other capital improvements and for partial payment of the aforesaid obligation of the Baptist College Foundation, and (c) refunding an outstanding indebtedness of the College in the amount of approximately $2,500,000.00 represented by the College's First Mortgage Serial Bonds dated July 1, 1966, the proceeds of which were used to construct buildings on the College campus, to purchase equipment and for land improvements.

In accordance with the provisions of the Act the College proposes to convey substantially all of its campus to the State of South Carolina at no cost to the State. The Authority will then lease the property so conveyed back to the College under a Lease Agreement by which the College will be obligated to operate and maintain it as an institution of higher learning and to pay to the Authority rentals in an amount sufficient to meet the payments of principal and interest as they become due on the proposed revenue bonds. The Authority issues the revenue bonds and make the proceeds available for the purposes aforesaid and the bonds would be repayable solely from the rentals to be paid by the Baptist College under the Lease Agreement and would be further secured by a Trust Indenture between the Authority and a Bank which would constitute a forecloseable lien on the property conveyed to the State.

Excluded from the property to be conveyed by the College to the State is the library which is being financed in part by a loan from the Department of Health, Education and Welfare; dormitory, which is being financed in part by a loan from the Department of Housing and Urban Development; a dormitory which is currently under lease to the College and the Physical Educational Building wherein are located facilities which are used for religious worship. Excluded also are approximately 50 acres of land forming a part of the College campus.

The College has sought the issuance of the bonds aforesaid and to that end filed a Petition dated January 6th, 1970 with the Authority. Thereafter, at its meeting on January 16th, 1970 the Authority adopted a Resolution giving preliminary approval to the financing arrangements outlined in the College's Petition.

The Plaintiff in this action seeks to enjoin any further action by the Defendants pursuant to the Act. He alleges that the Act is unconstitutional in that it is a State undertaking to finance private educational facilities, which is not a public purpose: that it violates Article X, Section 6 of the South Carolina Constitution which prohibits any pledge or loan of the State's credit for the benefit of any individual company, association or corporation; that the proposed actions of the Authority would deprive the Plaintiff of property without due process of law in violation of the provisions of Section 5 of Article I of the South Carolina Constitution; that the proposed actions of the Authority violate the equal protection clauses of the State and Federal Constitutions inasmuch as they would result in certain benefits to be afforded to "institutions of higher learning" as defined in the Act, exclusively, and the option granted to the College under the proposed Lease Agreement whereby the College upon payment of the bonds will reacquire the property conveyed to the State for the nominal sum of $1.00 violates the public policy of the State and Section 31 of Article III and Section 5 of Article I of the South Carolina Constitution inasmuch as it would constitute a donation of State property.

In the event the Act and the proposed actions of the Authority pursuant thereto do not violate any of the above-mentioned constitutional provisions the Plaintiff further contends that in any event the proposed action here for the benefit of the Baptist College at Charleston would violate Article XI, Section 9 of the South Carolina Constitution which forbids any State assistance to a College which is wholly or in part under the direction or control of any Church or of any religious or sectarian denomination, and would violate the First Amendment to the United States Constitution and Article I, Section 4 of the South

Carolina Constitution which prohibits the making of any law respecting an establishment of religion or prohibiting the free exercse thereof.

The Defendants have all filed Answers generally contending that the Act is constitutional and that proposed actions of the Authority for the benefit of the Baptist College at Charleston violate no constitutional provisions. There are no material issues of fact and the matter was heard on its merits before The Honorable Clarence E. Singletary, in his Chambers, at the Charleston County Courthouse, on Friday, April 24th, 1970, at which time were present Counsel for all the parties. After hearing arguments of Counsel and on the basis of the pleadings Judge Singletary handed down his Decree dated May 1st, 1970 wherein he sustained the Act and likewise sustained the proposed actions of the Authority thereunder for the benefit of the Baptist College at Charleston. Within due time the Plaintiff filed Notice of Appeal to the South Carolina Supreme Court.

COMPLAINT

(omitting caption and verification)

The Plaintiff above named, complaining of the Defendants above named, alleges:

1. The Plaintiff is a taxpayer of South Carolina and a resident of Charleston County, whose interests would be adversely affected by the action which the Defendants who constitute the Budget and Control Board of South Carolina (the State Board) propose to take pursuant to the Act hereinafter referred to and as such brings this action on behalf of himself and on behalf of all taxpayers of South Carolina.

2. The Plaintiff brings this action pursuant to the Uniform Declaratory Judgments Act (Sections 10-200, *et seq.*, Code of Laws of South Carolina, 1962).

3. The Defendants, Robert E. McNair, Governor of the State of South Carolina, Grady L. Patterson, Jr. Treasurer of the State of South Carolina, John H. Mills, Comptroller General of the State of South Carolina, Edgar A. Brown, Chairman of the Senate Finance Committee, Robert

J. Aycock, Chairman of the Ways and Means Committee, together constitute the State Board which has offices in the City of Columbia, in Richland County, South Carolina and acts as the Educational Facilities Authority (the Authority) under the Act hereinafter referred to.

4. The Defendant, Baptist College at Charleston (the College) is an eleemosynary educational corporation organized under the laws of the State of South Caorlina, and a copy of its Charter is attached hereto as Exhibit "A".

5. The Defendant, Daniel R. McLeod, is made a party in his capacity as Attorney General of the State of South Carolina pursuant to Section 10-2008, Code of Laws of South Carolina, 1962, inasmuch as this action seeks to declare the Educational Facilities Authority Act hereinafter referred to unconstitutional, null and void.

6. At its 1969 Session, the South Carolina General Assembly enacted the Educational Facilities Authority Act which appears as Section 25 of Act No. 349 of 1969 which became effective June 24th, 1969, and is hereinbefore and hereinafter referred to as the Act.

7. Under the provisions of the Act, the State Board acting as the Authority is authorized to provide financing for institutions of higher learning as defined in the Act by the issuance of revenue bonds payable solely out of the revenues of the Authority derived from the particular project for which they are issued, and secured by a mortgage on the project so financed. The Act further provides that revenue bonds may be issued to refund outstanding obligations issued by an institution of higher learning for the cost of a project as defined in the Act.

8. The College owns an educational plant which includes administration buildings, classroom buildings, a library, a physical education building and dormitories on a tract of land located in Charleston County which it operates as a four year institution of higher learning.

9. On information and belief, the Defendant College has heretofore presented a Petition to the State Board acting as the Authority dated January 6, 1970, wherein the College seeks the preliminary approval of the State Board acting as the Authority for the issuance of not

exceeding $3,500,000 of revenue bonds pursuant to the Act for the following purposes:

(a) To pay off outstanding indebtedness of the Baptist College Foundation incurred for the purpose of acquiring certain equipment and trailers utilized as a part of the College's educational plant (and for the payment of which the College is responsible) in the amount of approximately $275,000.

(b) In order to reimburse in part the College's Current Fund for moneys advanced to the College's Plant Fund and used to purchase school equipment and other capital improvements and for payment of the obligation of the Baptist College Foundation hereinbefore mentioned; and

(c) To refund an outstanding indebtedness of the College in the amount of approximately $2,500,000 represented by the College's first mortgage serial bonds dated July 1, 1966.

10. The Petition of the College aforesaid to the State Board acting as the Authority proposes that the College convey approximately 400 acres of land with the facilities located thereon to the Authority which shall then lease the said land and facilities back to the College at a rental which will be sufficient to meet the principal and interest as they become due on the proposed bonds. Such lease will further provide that the College upon payment of the bonds will re-acquire the land and facilities at no cost to the College.

11. A copy of the said Petition (without exhibits) is attached hereto as Exhibit "B".

12. On information and belief, the State Board acting as the authority at its meeting held January 16th, 1970, adopted a resolution as follows:

RESOLUTION

BE IT RESOLVED by the State Budget and Control Board of South Carolina acting as the Educational Facilities Authority pursuant to the Educational Facilities Authority Act (Section 25 of Act No. 349 of the 1969 Acts of the South Carolina General Assembly) that the Petition of the Baptist College at Charleston dated January 6th, 1970, to the Educational Facilities Authority seeking preliminary approval of the financing arrangement outlined in said Petition whereby the Authority would issue not exceeding $3,500,000 Revenue Bonds pursuant to the Educational Facilities Act be and the same is hereby granted, subject to the approval by the Authority of the final terms and conditions of the proposed financing and of the terms and provisions of the Lease Agreement and Trust Indenture to be used in connection therewith.

13. The Plaintiff is informed and believes that the proposed financing is for the benefit of a private eleemosynary corporation and that the State would receive no benefit therefrom, particularly in view of the fact that the proposed revenue bonds would refund outstanding indebtedness and, therefore, would not provide any additional educational facilities and that, therefore, the proposed financing would serve no public purpose.

14. The Plaintiff is informed and believes that the four year institution of higher learning owned and operated by the College is a church supported and controlled institution managed by a Board of Trustees elected by the South Carolina Baptist Convention "in trust for the South Carolina Baptist Convention" as more fully set forth in the College's Charter.

15. The Plaintiff is informed and believes that the Educational Facilities Authority Act is unconstitutional, null and void for the following reasons:

(a) The undertakings by the State to finance private educational facilities is not a public purpose for which the State may issue bonds;

(b) The Act purports to authorize and lend the credit of the State of South Carolina for the benefit of a private corporation in violation of Section 6, of Article X of the South Carolina Constitution;

(c) The proposed acts of the State Board pursuant to the Act would deprive the Plaintiff of property without due process of law in violation of the provisions of Section 5 of Article I of the South Carolina Constitution inasmuch as the State Board would expend public funds for the benefit of a private corporation;

(d) The Act and the proposed actions of the State Board violate the equal protection clauses of the State and Federal Constitutions inasmuch as certain privileges and immunities are afforded to "participating institutions for higher education" as defined in the Act which are not avaliable to all classes of persons generally nor available to all classes of persons in the field of education generally;

(e) The option proposed to be granted to the College to purchase land and facilities at a nominal value violates the public policy of the State of South Carolina in violation of Section 31 of Article III and Section 5 of Article I of the South Carolina Constitution inasmuch as it permits a sale of such property at a price less than its fair market value to a specified corporation.

16. The Plaintiff is informed and believes that the Educational Facilities Authority Act is unconstitutional, null and void in the case of the College and other church supported and church controlled institutions for the following additional reasons:

(a) The issuance of bonds pursuant to the Act would violate Article XI, Section 9 of the South Carolina Constitution which reads as follows:

> The property or credit of the State of South Carolina, or of any county, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source

derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

(b) The Act violates Article I, Section 4 of the South Carolina Constitution and the First Amendment to the United States Constitution which prohibit the General Assembly from making any law respecting an establishment of religion or prohibiting the free exercise thereof.

17. The Plaintiff is informed and believes that the State Board, unless restrained by this Court, will proceed with the issuance of the revenue bonds sought in the College's Petition.

18. In order to give the public general notice of the institution of this action, the Plaintiff seeks an Order authorizing the publication of an appropriate notice which would permit any other interested parties to seek to intervene and raise any such additional questions as they may see fit.

WHEREFORE, the Plaintiff prays that this Honorable Court take jurisdiction of this matter, issue its Order authorizing the publication of a notice of the institution of this action and allowing any interested person opportunity to seek to intervene and raise such questions as he may deem proper within twenty (20) days following such publication, and after a full consideration of the matter, issue its Order enjoining and forbidding the Defendants constituting the State Board to proceed in the manner herein set forth and further declaring that the Act hereinabove mentioned is unconstitutional, null and void.

/s/ BRYANT & FANNING
BRYANT & FANNING,
358 St. Paul Street,
Orangeburg, South Carolina,
Attorneys for the Plaintiff

Orangeburg, S. C.
March 20th, 1970.

EXHIBIT "A"

THE STATE OF SOUTH CAROLINA

Executive Department

CERTIFICATE OF INCORPORATION
BY THE SECRETARY OF STATE

WHEREAS, Dr. J. Roy Robinson, Charleston, S. C.; Dr. John A. Hamrick, Charleston, S. C.; Dr. Chester F. Russell, North Charleston, S. C.

two or more of the offices or agents appointed to supervise or manage the affairs of BAPTIST COLLEGE AT CHARLESTON which has been duly and regularly organized, did on the 5th day of February, A.D. 1960, file with the Secretary of State a written declaration setting forth:

That, at a meeting of the aforesaid organization held pursuant to the by-laws or regulations of the said organization, they were authorized and directed to apply for incorporation.

That, the said organization holds, or desires to hold, property in common for Religious, Educational, Social, Fraternal, Charitable or other eleemosynary purpose, or any two or more of said purposes, and is not organized for the purpose of profit or gain to the members, otherwise than is above stated, nor for the insurance of life, health, accident or property; and that three days' notice in the Charleston News and Courier, a newspaper published in the County of Charleston, has been given that the aforesaid Declaration would be filed.

And Whereas, Said Declarants and Petitioners further declared and affirmed.

FIRST: Their names and residences are as above given.

SECOND: The name of the proposed Corporation is BAPTIST COLLEGE AT CHARLESTON

THIRD: The place at which it proposes to have its headquarters or be located is in Lower South Carolina, in area of Charleston County, with headquarters in Charleston County, or in Berkeley or Dorchester Counties.

FOURTH: The purpose of the said proposed Corporation is to establish, equip, maintain, conduct, own and operate a Baptist, liberal arts college for educational purposes; to solicit and collect funds for the work and support of the college; to receive funds or other property for such purposes by gift, grant, devise, bequest or otherwise; to buy and sell real estate and personal property for such purposes, and to hold the same; to borrow money for the purpose of the college, securing said loan or loans as may be required and proper under the laws of the State of South Carolina; and to do such acts and carry on the work of a well regulated college, making all necessary contracts and other acts necessary to the purposes of the corporation; and to do all those things which are conferred by the laws of this State upon corporations of a like kind.

FIFTH: The names and residences of all Managers, Trustees, Directors or other officers, are as follows:

NAMES	RESIDENCE
J. Roy Robinson	328 Meeting St., Charleston, S. C.
John A. Hamrick	61 Church St., Charleston, S. C.
W. C. Horldt	328 Meeting St., Charleston, S. C.
Luther Knight	Rt. 2, Box 63, Chas. Heights, S. C.
Chester F. Russell	1520 Remount Rd., N. Chas., S. C.
C. H. Beard	Hemingway, S. C.
Paul Bullington	955 Bruce Rd., Cayce, S. C.
W. H. Clapp	Georgetown, S. C.
A. S. Ellis	Olar, S. C.
Frank Fisher	Varnville, S. C.
Furman R. Gressette	St. Matthews, S. C.
E. C. Hageman	Rt. 2, Walterboro, S. C.
Clif Jones	Summerville, S. C.
George A. Jones	Beaufort, S. C.

William M. Jones	Walterboro, S. C.
Harold N. Kirkland	Wagener, S. C.
R. E. McNair	Allendale, S. C.
Fred Norris, Jr.	Eutawville, S. C.
F. Mitchell Ott	Branchville, S. C.
Wm. Austin Roberts	Aiken, S. C.
Fitzhugh Sanders	Jacksonboro, S. C.
Bill Smith	Aiken, S. C.
James H. Storm	Summerville, S. C.
Bert Williams	Moncks Corner, S. C.
Ray Williams	Cope, S. C.
B. Thomas White	W. Main St., Lake City, S. C.

SIXTH: That they desire to be incorporated: In perpetuity.

SEVENTH: That in the event of the dissolution of Baptist College at Charleston, the residual assets of the Corporation will be turned over to another organization which is itself exempt from Federal Income Tax under Section 501 (c) (3), or any other sections or amendments applicable thereto, of the Internal Revenue Code, or to the Federal, State, or local Government.

EIGHTH: All the powers of the corporation are hereby lodged in a board of trustees consisting of twenty-five members, who shall be elected by the South Carolina Baptist Convention. The term of office of each member shall be five years; except that for the members first elected, five shall be elected for terms of one year, five for terms of two years, five for terms of three years, five for terms of four years, and five for terms of five years, with the several terms commencing January first next after such election; provided, that the trustees first elected shall serve interim from the last day of the session of the Convention during which they were elected to January first next thereafter. The Convention shall have the power to provide by resolution, and change from time to time, the terms of office of the various members of the board, and may arrange so that the terms shall not expire at the same time.

The powers herein conferred on the Convention may in whole or in part be delegated by it to a majority of the board, or to such other persons or organizations as the Convention may deem proper.

Each member of the board of trustees shall hold office until his successor has duly been elected or appointed, and qualifies.

NINTH: The board of trustees shall manage the affairs of the Baptist College at Charleston or any agency entrusted to it, in trust for the S. C. Baptist Convention consistent with the charter of the college.

TENTH: The business and financial policy of the South Carolina Baptist Convention shall be strictly adhered to. No purchased real estate shall be sold or encumbered without the approval of the General Board of the Convention or the Executive Committee thereof.

ELEVENTH: Greek letter social fraternities, or sororities, are not allowed among the students of the institution, either on or off the campus.

TWELFTH: The said college may grant to students under its charge diplomas or honorary testimonials, in such form as it may designate. It may also confer such literary honors, degrees and diplomas as are usually granted by any university, college or seminary of learning in the United States.

THIRTEENTH: The charter may be amended only on approval of the South Carolina Baptist Convention. *Before* being revised May 8th, 1967, Articles Eight and Nine read as follows:

Article Eight:

". . . . and shall also have the right to provide for the exercise at all times the right of removal of any member or members of the board at any time, for any cause that may seem proper, or without cause."

Article Nine:

The board of trustees shall manage the affairs of the Baptist College at Charleston or any agency entrusted to it, subject to direction by the South Carolina Baptist Convention.

Before being revised September 1, 1967, Article Eight read as follows:

Article Eight:

All the powers of the corporation are hereby lodged in a board of trustees consisting of twenty-five members, who shall be elected by the South Carolina Baptist Convention and such other persons as may be substituted for them, or chosen to succeed them or any of them by said Convention or in pursuance of resolution adopted by it. The term of office of each member shall be five years; except that for the members first elected, five shall be elected for terms of one year, five for terms of two years, five for terms of three years, five for terms of four years, and five for terms of five years, with the several terms commencing January first next after such election; provided, that the trustees first elected shall serve interim from the last day of the session of the Convention during which they were elected to January first next thereafter. The Convention shall have the power to provide by resolution, and change from time to time, the terms of office of the various members of the board, and may arrange so that the terms shall not expire at the same time.

The powers herein conferred on the Convention may in whole or in part be delegated by it to a majority of the board, or to such other persons or organizations as the Convention may deem proper.

Each member of the board of trustees shall hold office until his successor has duly been elected or appointed, and qualifies.

EXHIBIT "B"

STATE OF SOUTH CAROLINA

PETITION TO THE EDUCATIONAL FACILITIES AUTHORITY

Your Petitioner, Baptist College at Charleston, respectfully shows:

1. Baptist College at Charleston (the College) is an eleemosynary educational corporation organized under the laws of the State of South Carolina, and owns and operates a four (4) year institution of higher learning in Charleston County, and the College does not receive any financial support from the State of South Carolina. the governing body of the College is a twenty-five (25) member Board of Trustees elected by the South Carolina Baptist Convention. The Board of Trustees is empowered under the College's charter to "manage the affairs of the Baptist College at Charleston or any agency entrusted to it, in trust for the South Carolina Baptist Convention consistent with the Charter of the College." A copy of the College's charter with all amendments to date is enclosed herewith.

2. Heretofore, the College has expended funds to defray a part of the cost of constructing and acquiring the necessary educational facilities designated below with the cost of each item as set opposite the same:

DESIGNATION	COST
Classroom Building	$ 452,829.03
Science/Administration Building	524,595.84
Student Center/Dining Hall Building	622,916.24
Operations/Maintenance Building	41,199.00
Equipment and furnishings for Science/ Administration Building	59,026.27
Land Improvements (Sewer, grading and paving, underground wiring, etc.)	1,194,563.92
Total	$2,895,130.30

The costs referred to above were incurred during the years 1965 and 1966 and were defrayed from the proceeds

derived from the issuance of $2,500,000 First Mortgage Serial Bonds, Series of July 1, 1966, together with other funds available for that purpose. At the present time $2,419,500 in principal amount of the said bonds are now outstanding, payable as follows: $15,000 on July 1, 1970; $15,500 on January 1, 1971, and $2,389,000 on July 1, 1971, together with interest at the rate of 6% per annum. The said bonds are secured by a first mortgage lien upon most of the College's facilities and by a pledge of revenues of the College.

3. In addition to the indebtedness set forth above in the amount of $2,419,500, the College has transferred from its Current Fund to its Plant Fund approximately $890,000 which has been used to purchase school equipment to the extent of approximately $450,000, to purchase library books to the extent of approximately $222,000, for other capital improvements, and for payment on the obligation of the Baptist College Foundation hereinafter mentioned.

4. The Baptist College Foundation, an eleemosynary corporation, originally incurred an indebtedness in the amount of $625,000 which was used to purchase dining hall equipment, dormitory equipment and mobile house trailers used for temporary dormitories at the College. All of the equipment and trailers acquired by the Baptist College Foundation were so acquired at the instance of the College, which utilizes the same as a part of its educational plant under a lease arrangement whereby the College is responsible to retire the said indebtedness incurred by the Baptist College Foundation. At the present time as a result of payments made by the College the unpaid principal indebtedness of the Baptist College Foundation has been reduced to $275,000 and it is the obligation of the College under the said lease arrangement to provide the necessary funds to pay the same as it becomes due in installment of $75,000 on September 1, 1970, and the balance of $200,000 on July 1, 1971, together with interest at the rate of 6% per annum.

5. In order to establish a more convenient schedule of payments and to reimburse, in part, its Current Fund, the College has determined to borrow $750,000 which will be used (a) to pay off the abovementioned indebtedness in-

curred by the Baptist College Foundation and (b) the balance to reimburse, in part, the Current Fund for moneys advanced to the Plant Fund and used as set forth hereinabove in paragraph 3, except that none of the moneys advanced to purchase library books will be reimbursed from the said loan.

6. The College wishes to avail itself of the provisions of the Educational Facilities Authority Act (Section 25 of Act No. 349 of the 1969 Acts of the South Carolina General Assembly) to the end that the Educational Facilities Authority established thereunder will issue pursuant to the authorizations of the Act $3,500,000 of bonds, the proceeds of which will be used to pay off the said indebtedness of the Baptist College Foundation and to reimburse, in part, the Current Fund as set forth in paragraph 5, supra, and to refund the bonds described in paragraph 2 on or prior to their final maturity date, to wit, July 1, 1971.

7. At the present time the College owns approximately 500 acres of land in Charleston County whereon its educational facilities are located. In order to effect the said financing pursuant to the Educational Facilities Authority Act the College proposes to convey to the Authority a fee simple title to the College facilities except (a) the library which is being financed in part by $750,000 loan from the Department of Health, Education and Welfare, (b) a dormitory which is being financed in part by a $1,770,000 loan from the Department of Housing and Urban Development, (c) a dormitory which is currently leased to the College (d) the Physical Education Building wherein are located facilities used for religious worship and (e) approximately 50 acres of land. Consequently, the College proposes to convey approximately 400 acres of land with the facilities located thereon and the College will lease the land and facilities so conveyed from the Authority under a Lease Agreement which will unconditionally obligate the College (a) to pay sufficient rentals to meet the principal and interest requirements as they become due on such bonds, (b) to impose an adequate schedue of charges and fees in order to provide adequate revenues with which to operate and maintain the said facilities and to make the rental payments specified in

sub-paragraph (a) supra, and (c) to pay all costs of operating and maintaining the said facilities. The said Lease Agreement will further provide that upon the payment of the said bonds the said facilities will be reconveyed to the College at a cost of $1.00.

8. The abovementioned facilities to be conveyed include land having a value of approximately $2,000,000, academic equipment having a value of approximately $514,000, buildings having a value of approximately $1,752,000, campus improvements (drainage, grading, and electrical, sewage and water systems) having a value of approximately $1,194,000 and property owned by the Baptist College Foundation under lease to the College (consisting of house trailers used for students dormitories and sundry dining hall equipment) having a value of approximately $625,000. The values set forth above aggregate $6,085,000 and are obtained in the case of the land from a current appraisal and otherwise from the College's report of audit dated May 31, 1969, as supplemented by letter from Thomas E. Buskirk & Associates to Dr. John A. Hamrick, dated September 4, 1969; and a copy of the said report of audit and of the letter dated September 4, 1969, are enclosed herein.

9. By action taken at its 1969 Annual Convention the South Carolina Baptist Convention gave its consent to the College "to borrow up to $4,000,000 on long term obligations of the College for the purpose of refinancing existing obligations including the refinancing of the $2,500,000 capital bond issue maturing in 1971, the repayment of all amounts due from the Plant Fund to the Current Fund and payment of other obligations of the College; and the Convention further agreed that the College may "obtain such funds from a bond issue or issues, tax free or otherwise, or by a loan or loans from federal, state or private lending sources as the Trustees may determine. Nevertheless, the obligation of the College under the Lease Agreement referred to above, will NOT be an obligation of the South Carolina Baptist Convention although the College will additionally secure the payment of the bonds by a pledge of the annual capital allocations made by the South Carolina Baptist Convention to

curred by the Baptist College Foundation and (b) the balance to reimburse, in part, the Current Fund for moneys advanced to the Plant Fund and used as set forth hereinabove in paragraph 3, except that none of the moneys advanced to purchase library books will be reimbursed from the said loan.

6. The College wishes to avail itself of the provisions of the Educational Facilities Authority Act (Section 25 of Act No. 349 of the 1969 Acts of the South Carolina General Assembly) to the end that the Educational Facilities Authority established thereunder will issue pursuant to the authorizations of the Act $3,500,000 of bonds, the proceeds of which will be used to pay off the said indebtedness of the Baptist College Foundation and to reimburse, in part, the Current Fund as set forth in paragraph 5, supra, and to refund the bonds described in paragraph 2 on or prior to their final maturity date, to wit, July 1, 1971.

7. At the present time the College owns approximately 500 acres of land in Charleston County whereon its educational facilities are located. In order to effect the said financing pursuant to the Educational Facilities Authority Act the College proposes to convey to the Authority a fee simple title to the College facilities except (a) the library which is being financed in part by $750,000 loan from the Department of Health, Education and Welfare, (b) a dormitory which is being financed in part by a $1,770,000 loan from the Department of Housing and Urban Development, (c) a dormitory which is currently leased to the College (d) the Physical Education Building wherein are located facilities used for religious worship and (e) approximately 50 acres of land. Consequently, the College proposes to convey approximately 400 acres of land with the facilities located thereon and the College will lease the land and facilities so conveyed from the Authority under a Lease Agreement which will unconditionally obligate the College (a) to pay sufficient rentals to meet the principal and interest requirements as they become due on such bonds, (b) to impose an adequate schedue of charges and fees in order to provide adequate revenues with which to operate and maintain the said facilities and to make the rental payments specified in

sub-paragraph (a) supra, and (c) to pay all costs of operating and maintaining the said facilities. The said Lease Agreement will further provide that upon the payment of the said bonds the said facilities will be reconveyed to the College at a cost of $1.00.

8. The abovementioned facilities to be conveyed include land having a value of approximately $2,000,000, academic equipment having a value of approximately $514,000, buildings having a value of approximately $1,752,000, campus improvements (drainage, grading, and electrical, sewage and water systems) having a value of approximately $1,194,000 and property owned by the Baptist College Foundation under lease to the College (consisting of house trailers used for students dormitories and sundry dining hall equipment) having a value of approximately $625,000. The values set forth above aggregate $6,085,000 and are obtained in the case of the land from a current appraisal and otherwise from the College's report of audit dated May 31, 1969, as supplemented by letter from Thomas E. Buskirk & Associates to Dr. John A. Hamrick, dated September 4, 1969; and a copy of the said report of audit and of the letter dated September 4, 1969, are enclosed herein.

9. By action taken at its 1969 Annual Convention the South Carolina Baptist Convention gave its consent to the College "to borrow up to $4,000,000 on long term obligations of the College for the purpose of refinancing existing obligations including the refinancing of the $2,500,000 capital bond issue maturing in 1971, the repayment of all amounts due from the Plant Fund to the Current Fund and payment of other obligations of the College; and the Convention further agreed that the College may "obtain such funds from a bond issue or issues, tax free or otherwise, or by a loan or loans from federal, state or private lending sources as the Trustees may determine. Nevertheless, the obligation of the College under the Lease Agreement referred to above, will NOT be an obligation of the South Carolina Baptist Convention although the College will additionally secure the payment of the bonds by a pledge of the annual capital allocations made by the South Carolina Baptist Convention to

the College. For the calendar year 1970 the capital allocation by the South Carolina Baptist Convention to the College amounted to $224,000 and the College expects these annual capital allocations to continue and increase at the rate of 4% per year. However, the current schedule of annual capital allocations to the College which was established in 1968 by the South Carolina Baptist Convention extends through 1972, inasmuch as the capital allocation schedules are set up for 5 year periods.

10. At the present time the four (4) year institution of higher learning owned and operated by the College as aforesaid (and known as the Baptist College at Charleston) is not yet fully accredited but your Petitioners expect that it will receive full accreditation in December, 1970 from the Southern Association of Colleges and Secondary Schools.

11. The College's regular enrollment for the year 1969-70 school year is 1548 (exclusive of night students which number approximately 600) and the regular enrollment for each of the past years (exclusive of night students) was as follows:

1968-69	1448
1967-68	1050
1966-67	848
1965-66	375

Approximately 95% of the College's student body is composed of South Carolina residents.

Although the College is supported by the South Carolina Baptist Convention there are no religious qualifications for admission and there are enrolled at the Baptist College at Charleston students of many different religions, approximately 60% of whom are Baptists.

12. Before proceeding further with its financing arrangement, the College is seeking the Authority's approval of the proposed financing whereby the Authority would issue pursuant to the Educational Facilities Authority Act $3,500,000 of bonds whose proceeds would be used for the purposes set forth above. None of such bonds shall constitute a debt or liability of the State or of any political subdivision thereof and none of such bonds shall be secured by any pledge of the faith and credit of the State or of any

such political subdivision, but all such bonds shall be payable soley from the revenues provided therefor by the College under the said Lease Agreement. Such bonds shall be secured by an assignment of the rentals to be paid by the College under the Lease Agreement abovementioned (including the College's pledge of the capital allocations from the South Caroina Baptist College and to discharge that obligation) and by a Trust Indenture between the Authority and a bank yet to be named which would constitute a forecloseable lien upon the property conveyed to the Authority and leased to the College.

13. In the event such preliminary approval is given the College will present to the Authority for its consideration appropriate forms of a Lease Agreement and Trust Indenture including the maturity schedule and interest rates of the proposed bonds.

WHEREFORE, the College prays that the Authority indicate its preliminary approval of the financing arrangement outline hereinabove whereby the Authority would issue not exceeding $3,500,000 of bonds pursuant to the Educational Facilities Authority Act for the purposes set forth above.

January 6th, 1970.

BAPTIST COLLEGE AT CHARLESTON

By John A. Hamrick, President

Attest:

Fred K. Norris, Jr., Chairman
of the Board of Trustees,
Baptist College at Charleston
Paul M. Pridgen, Jr., Secretary,
Baptist College at Charleston

ANSWER OF BAPTIST COLLEGE AT CHARLESTON

(omitting caption and verification)

The Defendant Baptist College at Charleston answers the Plaintiff's Complaint as follows:

1. This Defendant admits the allegations of the Complant set forth in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 thereof.

2. This Defendant admits, on information and belief, the allegations of the Complaint set forth in paragraphs 1, 17 and 18.

3. With regard to the allegations of paragraph 13 of the Complaint, this Defendant admits that the proposed financing would benefit this Defendant which is a private eleemosynary corporation and this Defendant denies the remaining allegations of paragraph 13 and specifically alleges that the proposed financing will provide for the orderly handling of indebtedness heretofore incurred by this Defendant for the acquisition and construction of its educational plant and upon the completion of the proposed financing this Defendant will be in a better position to meet the needs for higher education in South Carolina, which will directly benefit the State of South Carolina and all of its citizens.

4. With regard to the allegations of paragraph 14 of the Complaint, this Defendant alleges that the College operated by this Defendant under the name of Baptist College at Charleston is a non-sectarian institution of higher learning with an enrollment for the 1969-1970 school year of 1548 (exclusive of night students which number approximately 600) representing many different religions. This Defendant admits that the said College receives financial support from the South Carolina Baptist Convention and from members of other denominational groups, foundations, industries, etc., and further alleges that there are no religious qualifications for admission to the said College and that approximately 60% of the College's student body are Baptist, and approximately 40% of the student body are of other denominations.

5. This Defendant denies the allegations of the Complaint set forth in paragraphs 15 and 16 thereof and expressly alleges that the Educational Facilities Authority Act is constitutional in all respects and that the proposed action of the State Budget and Control Board to issue revenue bonds pursuant to the said Act as requested by this Defendant would not violate provisions of the State or Federal Constitutions.

FURTHER ANSWERING THE COMPLAINT AND AS AN ADDITIONAL DEFENSE THERETO

6. The Educational Facilities Authority Act (Section 25 of Act 349 of 1969) specifically provides that any bonds issued pursuant thereto shall be payable solely out of the revenues derived by the Authority from the project for which such bonds are issued and further in subsection (K) the said Act provides as follows:

> "(K) Revenue bonds issued under the provisions of this section shall not be deemed to constitute a debt or liability of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State of South Carolina nor the authority shall be obligated to pay the same or the interest thereon except from revenues of the project or the portion thereof for which they are issued and that neither the faith and credit nor the taxing power of the State of South Carolina or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds under the provisions of this act shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment."

FURTHER ANSWERING THE COMPLAINT AND AS AN ADDITIONAL DEFENSE THERETO

7. If the proposed financing requested by this Defendant is consummated the bonds to be issued by the Authority which will be repaid from revenues to be paid by this Defendant will be issued as tax free obligations, the interest on which will not be subject to Federal Income Taxes and, as a result, the interest cost to be borne by this Defendant will be less than the interest cost which would have to be borne by this Defendant if this Defendant

should refinance its indebtedness through the issuance of obligations the interest on which is taxable. Consequently, the financial burden on this Defendant will be less if the requested financing is completed and this Defendant will, therefore, be better able to continue to meet the needs for higher education in South Carolina. Furthermore, of the present enrollment at the Baptist College at Charleston approximately 95% of the student body are residents of South Carolina. Thus, the proposed financing will directly promote higher education in South Carolina and benefit the citizens of this State.

FURTHER ANSWERING THE COMPLAINT AND AS AN ADDITIONAL DEFENSE THERETO

8. While the South Carolina Baptist Convention elects the Board of Trustees of this Defendant and contributes financial support to the opertion of this Defendant's College, the said College is not either wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization, but is under the control of the said Board of Trustees as is more fully set forth in this Defendant's Charter.

FURTHER ANSWERING THE COMPLAINT AND AS AN ADDITIONAL DEFENSE THERETO

9. The Educational Facilities Authority Act is a general law for the benefit of any "institution for higher learning" which is defined therein to mean any nonprofit educational institution within the State authorized by law to provide a program of education beyond the high school level and which does not receive State financial support but shall not include any State supported institution; and the said Act, therefore, does not violate the constitutional prohibition against special legislation contained in Article III, Section 34, subsection 9 of the South Carolina Constitution.

FURTHER ANSWERING THE COMPLAINT AND AS AN ADDITIONAL DEFENSE THERETO

10. The option proposed to be granted under the said Act by which the participating institution may repurchase

violate Article III, Section 31 or Article I, Section 5 of the South Carolina Constitution inasmuch as the property involved is acquired by the State for security purposes only in order to carry out the intent of the legislature to provide for the issuance of tax free obligations in order to benefit institutions of higher learning and the property rights of the State in and to the property so acquired is, therefore, subject to the conditions imposed at the time of its acquisition which include such an option.

FURTHER ANSWERING THE COMPLAINT AND AS AN ADDITIONAL DEFENSE THERETO

11. This Defendant is advised and believes that the assistance intended to be provided by the Act to participating institutions of higher learning is provided through similar legislation in many other states to institutions of higher learning located therein, and the Act therefore equalizes the educational opportunities available in South Carolina with those available in other states.

WHEREFORE, having fully answered the Complaint the Defendant prays that this Honorable Court take jurisdiction of this matter and after due consideration issue its Order dismissing the Complaint and sustaining the right of the State Board acting as the Authority to proceed with the issuance of revenue bonds pursuant to the Act as requested by this Defendant.

SINKLER, GIBBS & SIMONS
Attorneys for the Baptist
College at Charleston

Charleston, South Carolina
March 31st, 1970

ANSWER OF THE BUDGET AND CONTROL BOARD AND OF THE ATTORNEY GENERAL

(omitting caption and verification)

The defendants Robert E. McNair, Grady L. Patterson, Jr., John H. Mills, Edgar A. Brown, Robert J. Aycock and Daniel R. McLeod, answering the Complaint herein, would respectfully show the Court that:

1. Each and every allegation of the Complaint not hereinafter admitted, qualified or explained is denied.

2. The allegations of paragraph 1 of the Complaint are admitted upon information and belief.

3. The allegations of paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17 and 18 of the Complaint are admitted.

4. With regard to the allegations of paragraph 13 of the Complaint, these defendants admit, upon information and belief, that the proposed financing would benefit the Baptist College at Charleston, which is a private eleemosynary corporation, and deny the remaining allegations of paragraph 13 and specifically allege, upon information and belief, that the proposed financing will provide for the orderly handling of indebtedness heretofore incurred by the Baptist College at Charleston for the acquisition and construction of its educational plant and upon the completion of the proposed financing the Baptist College at Charleston will be in a better position to meet the needs for higher education in South Carolina, which will directly benefit the State of South Carolina and all of its citizens.

5. With regard to the allegations of paragraph 14 of the Complaint, these defendants admit that the Charter of the Baptist College at Charleston provides hat the College will be managed by a Board of Trustees elected by the South Carolina Baptist Convention "in trust for the South Carolina Baptist Convention" and denies, upon information and belief, the remaining allegations of paragraph 14.

6. The allegations of paragraphs 15 and 16 of the Complaint are denied.

7. In the event this honorable Court finds that the Act is unconstitutional as applied to the defendant South Carolina Baptist College at Charleston, it is specifically denied that the Act is unconstitutional in its possible application to other institutions for higher learning.

WHEREFORE, having fully answered the Complaint herein, these defendants pray for an order dismissing the Complaint and sustaining the right of the State Budget and Control Board, acting as the Educational Facilities Authority, to proceed with the issuance of revenue bonds pursuant to the Act as requested by the Baptist College at Charleston

and for such other and further relief as may be just and proper, together with costs.

DANIEL R. McLEOD,
Attorney General,
C. PINCKNEY ROBERTS,
Assistant Attorney General,
Attorneys for the Budget and Control Board of South Carolina and the Attorney General of South Carolina.

Columbia, S. C.
April 14, 1970

ORDER OF PUBLICATION

The Plaintiff has instituted the captioned action contesting the constitutionality of he Educational Facilities Authority Act (Section 25 of Act No. 349 enaced by the 1969 South Carolina General Assembly) in general and further contesting the constitutionality of the use of the said Act for the benefit of the Defendan Baptist College at Charleston.

The Defendants include the said Baptist College at Charleston, the members of the Budget and Control Board of the State of South Carolina and the Attorney General of the State of South Carolina. Under the terms of the said Act the said Budget and Control acting as the Educational Facilities Authority is empowered to issue revenue bonds pursuant thereto. The Plaintiff alleges that the said Budget and Control Board has heretofore given preliminary approval at the request of the said Baptist College at Charleston that the Budget and Control Board issue not exceeding $3,500,000 of revenue bonds pursuant to the said Act for the purpose of refunding certain obligations of the Baptist College at Charleston.

The Plaintiff wants to advise the public of the institution of this action in the event any other person wants to seek to intervene and raise any other question regarding the constitutionality of the Act. To that end the Plaintiff asks this Court to authorize the publication of a Notice in the form hereinafter set forth in newspapers having cir-

culation throughout South Carolina. The Plaintiff is not required by statute to publish such a Notice and there is no statutory procedure which has been called to my attention providing for the same. However, Plaintiff's request is designed to protect the interest of the public generally and the publication requested will not adversely affect any other parties to this action.

NOW, THEREFORE, on motion of Bryant & Fanning, Attorneys for the Plaintiff, it is

ORDERED, that the following Notice be published once in the Columbia, S. C. "The State" following the full caption of this action:

NOTICE TO ALL TAXPAYERS OF THE STATE OF SOUTH CAROLINA

The Plaintiff above named has instituted the captioned action in the Court of Common Pleas for Charleston County wherein his Summons and Complaint were filed on March 20, 1970. The Plaintiff is a resident and taxpayer of Charleston County and of the State of South Carolina and brings this action representing all of the taxpayers of South Carolina. The Defendants include the members of the Budget and Control of the State of South Carolina (the State Board), Daniel R. McLeod, as Attorney General of the State of South Carolina, and Baptist College at Charleston, an eleemosynary corporation.

At its 1969 Session, the South Carolina General Assembly enacted the Educational Facilities Authority Act (the Act) which appears as Section 25 of Act No. 349 of 1969. Under the provisions of the Act the State Board, acting as the Educational Facilities Authority (the Authority) is authorized to provide financing for institutions of higher learning as defined in the Act by the issuance of revenue bonds payable solely out of the revenues of the Authority derived from the particular project for which they are issued and secured by a mortgage on the project so financed. The Act further authorizes the issuance of revenue bonds to refund outstanding obligations.

Baptist College at Charleston (the College) owns an educational plant in Charleston County and has petitioned

the Authority for the issuance of not exceeding $3,500,000 of revenue bonds pursuant to the Act in order to refund certain obligations more fully set forth in the Complaint and the Authority at its meeting held January 16th, 1970 gave preliminary approval to the requested financing.

The Plaintiff in this action seeks to enjoin the issuance of any such revenue bonds. The Plaintiff alleges that the Act is unconstitutional upon several grounds and that in any event utilization of the Act for the benefit of the College and any other church supported or church affiliated institutions would violate, inter alia, the provisions of Article XI, Section 9 of the South Carolina Constitution which prohibits the use of the property or credit of the State in aid of any college which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

Additional copies of the Complaint are available at the office of the Clerk of the Court of Common Pleas for Charleston County, located in the Charleston County Courthouse, Charleston, South Carolina.

The within Notice is being published in the Columbia, S. C. "The State" pursuant to the Order of the Honorable Clarence E. Singletary, Resident Judge, Ninth Judicial Circuit. Any interested person or persons may, if so minded, seek to intervene in this action by filing with this Court and serving upon the undersigned attorneys at their address shown below not later than 20 days following the date of this publication a Petition that he or they be permitted to intervene upon the grounds stated therein.

Not sooner than 20 days following the publication of this Notice the Plaintiff will seek a hearing on the issues to be determined in this action.

BRYANT & FANNING,
358 St. Paul Street,
Orangeburg, S. C. 29115,
Attorneys for the Plaintiff.

Publication Date:
March 25, 1970.

culation throughout South Carolina. The Plaintiff is not required by statute to publish such a Notice and there is no statutory procedure which has been called to my attention providing for the same. However, Plaintiff's request is designed to protect the interest of the public generally and the publication requested will not adversely affect any other parties to this action.

NOW, THEREFORE, on motion of Bryant & Fanning, Attorneys for the Plaintiff, it is

ORDERED, that the following Notice be published once in the Columbia, S. C. "The State" following the full caption of this action:

NOTICE TO ALL TAXPAYERS OF THE STATE OF SOUTH CAROLINA

The Plaintiff above named has instituted the captioned action in the Court of Common Pleas for Charleston County wherein his Summons and Complaint were filed on March 20, 1970. The Plaintiff is a resident and taxpayer of Charleston County and of the State of South Carolina and brings this action representing all of the taxpayers of South Carolina. The Defendants include the members of the Budget and Control of the State of South Carolina (the State Board), Daniel R. McLeod, as Attorney General of the State of South Carolina, and Baptist College at Charleston, an eleemosynary corporation.

At its 1969 Session, the South Carolina General Assembly enacted the Educational Facilities Authority Act (the Act) which appears as Section 25 of Act No. 349 of 1969. Under the provisions of the Act the State Board, acting as the Educational Facilities Authority (the Authority) is authorized to provide financing for institutions of higher learning as defined in the Act by the issuance of revenue bonds payable solely out of the revenues of the Authority derived from the particular project for which they are issued and secured by a mortgage on the project so financed. The Act further authorizes the issuance of revenue bonds to refund outstanding obligations.

Baptist College at Charleston (the College) owns an educational plant in Charleston County and has petitioned

the Authority for the issuance of not exceeding $3,500,000 of revenue bonds pursuant to the Act in order to refund certain obligations more fully set forth in the Complaint and the Authority at its meeting held January 16th, 1970 gave preliminary approval to the requested financing.

The Plaintiff in this action seeks to enjoin the issuance of any such revenue bonds. The Plaintiff alleges that the Act is unconstitutional upon several grounds and that in any event utilization of the Act for the benefit of the College and any other church supported or church affiliated institutions would violate, inter alia, the provisions of Article XI, Section 9 of the South Carolina Constitution which prohibits the use of the property or credit of the State in aid of any college which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

Additional copies of the Complaint are available at the office of the Clerk of the Court of Common Pleas for Charleston County, located in the Charleston County Courthouse, Charleston, South Carolina.

The within Notice is being published in the Columbia, S. C. "The State" pursuant to the Order of the Honorable Clarence E. Singletary, Resident Judge, Ninth Judicial Circuit. Any interested person or persons may, if so minded, seek to intervene in this action by filing with this Court and serving upon the undersigned attorneys at their address shown below not later than 20 days following the date of this publication a Petition that he or they be permitted to intervene upon the grounds stated therein.

Not sooner than 20 days following the publication of this Notice the Plaintiff will seek a hearing on the issues to be determined in this action.

BRYANT & FANNING,
358 St. Paul Street,
Orangeburg, S. C. 29115,
Attorneys for the Plaintiff.

Publication Date:
March 25, 1970.

IT IS FURTHER ORDERED that any interested person or persons may seek to intervene in this action and raise such questions as he or they deem proper by filing with this Court and serving upon the Plaintiff's Attorneys at their address within twenty (20) days following such publication a Petition that he or they be allowed to intervene in this action upon the grounds stated in said Petition; and

IT IS FURTHER ORDERED that this Order shall not bar intervention herein after the expiration of the said twenty (20) day period by a person who shows just cause for his delay in seeking to intervene herein.

/s/ CLARENCE E. SINGLETARY,
Judge of the Ninth Judicial Circuit.

Charleston, S. C.
March 20, 1970

DECREE

At issue here is the constitutionality of the recently enacted Educational Facilities Authority Act which appears as Section 25 of Act No. 349 of 1969 which became effective June 4, 1969 (hereinafter referred to as the Act). This action is brought for a declaratory judgment pursuant to the provisions of Sections 10-2001, et seq., seeking a holding that the Act is unconstitutional and that certain actions taken pursuant thereto by the Defendants herein are invalid and should be enjoined.

In his Complaint the Plaintiff alleges that he is a taxpayer of the State of South Carolina and a resident of Charleston County, whose interest would be adversely affected by the Defendants who constitute the Budget and Control Board of South Carolina, and, therefore, has standing to challenge the validity of the Act and the actions of the Defendants thereunder. It is clear that his contention in this respect is correct. *Shillito v. City of Spartanburg,* 214 S. C. 11, 51 S. E. (2d) 95; 52 Am. Jur., Sec. 3, Pg. 3.

It also appears that a justiciable controversy exists.

The returns filed on behalf of the Defendants raise no issues of fact and accordingly it is entirely appropriate

that the case be disposed of on the pleadings and on the exhibits which have been presented to me for my consideration.

Under the provisions of the Act the Budget and Control Board of the State of South Carolina (the State Board) acting as the Educational Facilities Authority (the Authority) is authorized to provide financing for institutions of higher learning as defined in the Act by the issuance of revenue bonds payable solely out of the revenues of the Authority derived from the particular project for which they are issued and secured by a mortgage on the project so financed. The Act further provides that revenue bonds may be issued to refund outstanding obligations issued by an institution of higher learning for the cost of a project as defined in the Act.

The Defendant, Baptist College at Charleston, an eleemosynary South Carolina corporation (the College) has petitioned the Authority seeking the preliminary approval of the Authority for the issuance of not exceeding $3,500,000 of revenue bonds pursuant to the said Act for the purpose of (a) paying off outstanding indebtedness of the Baptist College Foundation incurred for the purpose of acquiring certain equipment and trailers utilized as a part of the College's educational plant (the payment for which the College is responsible) in the amount of approximately $275,000; (b) reimbursing in part the College's Current Fund for moneys advanced to the College's Plant Fund used to purchase school equipment and other capital improvements and for the payment of the aforesaid obligation of the Baptist College Foundation; and (c) refunding an outstanding indebtedness of the College in the amount of approximately $2,500,000 represented by the College's first mortgage serial bonds dated July 1, 1966.

The said Petition of the College proposes that the College convey approximately 400 acres of land with the facilities located thereon to the Authority which shall in turn lease the said land and facilities back to the College at a rental which will be sufficient to meet the payment of principal and interest as they become due on the proposed bonds. Such lease will further provide that the College,

upon payment of the bonds, shall reacquire the said land and facilities. at no cost to the College.

At its meeting held January 16th, 1970 the Authority adopted a Resolution giving preliminary approval to the financing arrangements outlined in the Petition of the College to the Authority subject to approval by the Authority of the final terms and conditions of the proposed financing and of the terms and provisions of the Lease Agreement and Trust Indenture to be used in connection with such financing.

It has been agreed that all conditions imposed by the Educational Facilities Authority Act have been or will be duly met so that squarely at issue is the constitutionality of the Act and the validity of the actions of the Defendants pursuant thereto.

Plaintiff challenges that the Act is invalid on five grounds:

1. The undertaking by the State to finance private educational facilities is not a public purpose for which the State may issue bonds;

2. The Act violates the first sentence of Section 6 of Article X which states ". . . the credit of the State shall not be pledged or loaned for the benefit of any individual, company, association or corporation . . .".

3. The proposed actions of the Authority would deprive Plaintiff of property without due process of law in violation of the provisions of Section 5 of Article I of the South Carolina Constitution inasmuch as the Authority would expend public funds for the benefit of a private corporation.

4. The Act and the proposed actions of the Authority violate the equal protection clauses of the State and Federal Constitutions inasmuch as certain privileges and immunities are afforded to "institutions of higher learning" as defined in the Act which are not available to all classes of persons generally nor available to all persons in the field of education generally.

5. The option proposed to be granted to the College to purchase land and facilities at a nominal value violates the public policy of the South Carolina Constitution in

violation of Section 31, Article III and Section 5 of Article I inasmuch as it permits a donation of property of the State.

It is further contended by the Plaintiff that the Act is unconstitutional, null and void in the case of the College and other church supported institutions for the reason that the issuance of bonds pursuant to the Act would violate Article XI, Section 9 of the South Carolina Constitution forbidding aid from the State of South Carolina to any college, etc. which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination and for the further reason that said Act violates the first amendment to the United States Constitution and Article I, Section 4 of the South Carolina Constitution which prohibits the making of any law respecting an establishment of religion or prohibiting the free exercise thereof.

I shall dispose of these questions in the order set forth above.

All legislative action should serve a public rather than a private purpose. The Act recites that in order for the people of the State to increase their commerce, welfare and prosperity and improve their health and living conditions it is essential that this and future generations of youths be given the fullest opportunity to learn and to develop their intellectual and mental capacities. The Act takes note that to meet this goal it is essential that institutions for higher learning within the State be provided with appropriate additional means to assist such youth in achieving the required level of learning and development of their intellectual and mental capacities. The true purpose of the Act is to provide a measure of assistance and an alternative method to enable institutions for higher learning in the State to provide the facilities and structures which are sorely needed to accomplish this aim to the public benefit and good of all the people of this State. This purpose is served by the issuance of revenue bonds pursuant to the Act for the purpose of refunding outstanding obligations originally incurred, as in the instant case, for purposes for which bonds can be issued. It is too late to question whether or not the promotion of secular education is a public purpose as it is universally acceptable as a proper public pur-

pose. *Everson v. Board of Education,* 330 U. S. 1, 7, 9, 67 S. Ct. 504, 91 L. Ed. 711 at 719; *Cochran v. Louisiana State Board of Education,* 281 U. S. 370, 374, 50 S. Ct. 335, 74 L. Ed. 913. If the general public benefit is the dominant interest served, constitutional demands are not offended, even though the aid inures to the benefit of a private institution.

In regard to the second attack on the constitutionality of the Act, based on the contention that the credit of the State would be pledged or loaned for the benefit of a corporation in violation of Section 6 of Article X, the case of *Feldman v. the City of Charleston,* 23 S. C. 57, has been cited to me as well as the decision in the case of *Bolton v. Wharton,* 163 S. C. 242, 161 S. E. 454.

In the *Feldman* case, the City of Charleston issued bonds to lend their proceeds to those whose houses had been destroyed in the great conflagration of the eighteen sixties. The bonds were payable from ad valorem taxes levied upon the taxable property in Charleston. However, the City of Charleston had procured mortgages from those to whom it had loaned money covering the residences built with the proceeds of the bonds. From the facts in this case, it appears that for many years the City of Charleston recognized the validity of the bonds and made payments on account of the coupons, but when it went into default, it raised for the first time the question that the power of the legislature to authorize bonds and the actions of the City officials in disposing of them violated the constitutional provisions requiring that the purpose for which the proceeds of public bonds be expended be public in nature. In holding that the Act of the legislature and the subsequent action of the City of Charleston in issuing the bonds were unconstitutional, this Court stated:

> "However certain and great the resulting good to the general public it does not by reason of its comparative importance cease to be incidental. The incidental advanage to the public or to the State which results from the promotion of private interests and the prosperity of private enterprises or business does not justify their aid by the use of public money raised

by taxation *or for which taxation may become necessary.*" (Emphasis added.)

Notwithstanding, that as a result of the devastation resulting from the war, much of Charleston lay in waste, the Court held that the basic purpose of the loan was private rather than public, and for that reason, the bonds were, insofar as the City of Charleston was concerned, null and void. It is significant, however, that the Court held that it was not only the right, but the duty of the City Council to collect from those who had borrowed the proceeds of the bonds the sums due by them and to apply the same to the payment of the fire loan bonds. Hence, the basic holding in this case, denied the validity of the bonds simply because they were payable from the proceeds of taxation.

In the *Bolton* case, the suit was brought upon a note purported to be issued by the City of Union as a tax anticipation note, but in reality simply a promissory note, issued to obtain funds with which to underwrite stock in a proposed local silk manufacturing corporation from which Union was expected to incur benefits resulting from the increased taxable values, from advancement of property values of property in general and from increased impetus to the life of the community. The majority of the Court held that because there was an absence of both constitutional and statutory authority to issue the notes they were null and void.

The following is taken from the decision of Circuit Judge Sease and whose opinion was affirmed *in toto* by the Supreme Court (161 S. E. 454, 457):

> "The power given to the city council to issue bonds, so as to bind not only all the taxpayers of the city, but their children as well, is a very high confidence and trust, and can be properly exercised for no other purpose than 'for the public use of the corporation,' no matter how great the temptation may be. . . . We cannot suppose that it was intended to give the city council, as such, the right to go into commerce, to buy for the purpose of selling goods, or to enter into any

private business or speculation whatever. *Mauldin v. City Council of Greenville* (1890), 33 S. C. 1, 24, 11 S. E. 434, 438, 8 L. R. A. 291. The language of Mr. Justice Marion in *Haesloop v. City Council of Charleston, supra,* 123 S. C. page 286, 115 S. E. 596, 601, seems decisive that these obligations were not issued to realize funds to be put to a purpose "essentially public" in their nature: "In ascertaining what is a public purpose within the power to tax, such benefits from a proposed expenditure as will accrue from increased taxable values, from enhancement of property values generally, and from increased impetus to the commercial life of the community will ordinarily be considered of too incidental or secondary a character to justify an outlay of public funds.' Applying these rules of law to the instant obligations, it seems beyond cavil that the notes were not issued for a valid public purpose."

Significantly again however, the only method by which the City of Union might discharge the obligation sued on in the *Bolton* case was through the levy of taxes.

The Act here requires that the bonds to be issued be paid solely from the revenues to be paid by the participating institution for higher education, as defined in the Act, and it specifically provides that all bonds issued under the Act shall contain on the face thereof a statement to the effect that neither the State of South Carolina nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the project or the portion thereof for which they are issued and that neither the faith and credit nor the taxing power in South Carolina or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bond. The Act further provides that the issuance of revenue bonds thereunder shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. Clearly, therefore, the only funds pledged for the payment of the bonds are lease rental payments to be made by the Bapist College

at Charleston. Since it is conceded that the only remedies of the bondholders in the event of default is to pursue the rights of the Authority to collect from its lessee, and if need be, to foreclose the trust indenture and have the property sold, the State's credit can never be adversely affected. This situation is in reality akin to the rights of those who held the City of Charleston Fire Loan Bonds to proceed against the persons to whom the City had loaned the proceeds of those bonds. Accordingly, the result of the *Feldman* case clearly supports the validity of the Act which for all intents and purposes is analogous to the South Carolina Industrial Revenue Bond Act, the validity of which was upheld in *Elliott v. McNair* (1967), 250 S. C. 75, 156 S. E. (2d) 421.

It is contended that the Act violates the due process clause of the State Constitution inasmuch as it permits the expenditure of public moneys for the benefit of a private corporation. I point out that under the Act no public moneys as such can be expended to such institutions for higher education in the construction, financing and refinancing of projects as such term is defined in the Act. The entire cost thereof is financed through the sale of bonds which are payable by the participating institution for higher education. No public money is involved.

It is next contended that the Defendant, the Baptist College at Charleston, and the other institutions for higher education which will utilize the Act, are granted special privileges in violation of the privileges and immunity section of the Constitution. It is argued that the benefits of the Act are not available to all classes or persons generally nor available to all persons in the field of education generally. It is argued that such persons, both in the field of education and without, who do not qualify under the Act, must invariably pay a higher rate of interest because of the fact that the interest on bonds issued by the Act is not subject to income taxation. Plaintiff overlooks the basic object of the Act in setting forth this argument. It is not the purpose of the Act to afford any special privileges. It is, as stated above, the purpose of the Act to assist institutions for higher learning in the construction, financing and refinancing of their projects as defined in the Act, which in turn

results in the benefit to the people of the State in the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions. The fact that the Baptist College at Charleston and other higher education institutions like it obtain advantages from the Act is incidental. See *Elliott v. McNair, supra.*

It is next contended that the option proposed to be granted to the Defendant, Baptist College at Charleston, to purchase land and facilities at a nominal value violates the public policy of the State of South Carolina and is in violation of Section 31 of Article III and Section 5 of Article I of the South Carolina Constitution inasmuch as it permits the donation of such property. The former clause provides that lands belonging to the State shall never be donated to private corporations and that such lands shall not be sold to corporations "for less price than that for which it can be sold to individuals". The Act in paragraph H actually requires the reconveyance to the participating institution for higher education at such time that the principal of and interest on the bonds of the Authority issued to finance the cost of a particular project or projects, including any revenue refunding bonds issued to refund and refinance such revenue bonds, have been fully paid and retired, or when adequate provision has been made to fully pay and retire the same, and all other conditions of the Trust Indenture authorized in its name have been satisfied, and the lien of such Trust Indenture has been released in accordance with the provisions thereof. I do not find in our decisions nor has any decision been submitted to me which requires public agencies to sell property at not less than full market value. Our decisions clearly hold that a public agency may exercise discretion in effecting the sale of public property and that neither public bidding is required nor is there a requirement that the maximum price be obtained. Indeed, indirect benefits to result to the public may properly be considered. When such reconveyance shall take place, it will be a part of the overall contract, and of the consideration for the contract existing *ab initio,* and not a contract arising subsequent to the issuance of the bonds. Here again the situation is analogous to the option to purchase the industrial revenue project granted the industry by the

South Carolina Industrial Revenue Bond Act, the validity of which provision was upheld in *Elliott v. McNair, supra.*

The major thrust of the Plaintiff's attack is the contention that the issuance of the Bonds pursuant to the Act would violate Article XI, Section 9 of the Constitution, which reads as follows:

> "The property or credit of the State of South Carolina, or of any county, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization."

It has been made to appear to me that the Baptist College at Charleston is a corporation organized and existing under the laws of the State of South Carolina and in its Charter, the purpose of the said corporation, among other things, is to establish, equip, maintain, conduct and operate a Baptist Liberal Arts College for educational purposes. Further, all the powers of the corporation are lodged in a Board of Trustees consisting of 25 members, all of whom are elected by the South Carolina Baptist Convention. It has been further shown that approximately 60% of the enrollment of the college students of the Baptist College are of the Baptist faith. It has also been shown that this is about the ratio of Baptist to non-Baptist in this area of the State. Under any interpretation of this provision of our Constitution, however, there is no question but that the operation of the Baptist College at Charleston is at least in part under the direction or control of the South Carolina Baptist Convention. Thus, the question is presented whether or not the proposed actions of the Defendants would constitute a loan or gift of the property or credit of the State of South Carolina in contravention of the Constitution. I do not find that any property of the State of South Carolina, as such, is involved inasmuch as the State will acquire (at no

cost to the State) a title subject to certain conditions, one of which is an option in favor of the Baptist College to reacquire the property so conveyed to the State; and thus the question is limited to whether or not the credit of the State of South Carolina has been given, loaned or contracted for, appropriated or otherwise used directly or indirectly, in aid of the Baptist College. In view of my holding above, that the credit of the State is in no way involved in the proposed actions of the Defendants, I find that the credit of the State can in no way be considered as aiding in any way the Baptist College at Charleston.

The next contention of the Plaintiff to the effect that the State is enacting legislation respecting an establishment of religion, or prohibiting the free exercise thereof, in contravention of Section 4, Article I, of the South Carolina Constitution and of the first amendment of the Federal Constitution, gives me greater concern. I do not find any South Carolina cases in point on this question, and there have been no United States Supreme Court cases called to my attention directly attacking the Higher Education Facility Acts which have been adopted in several of the States. There have been, however, three significant United States Supreme Court cases which bear on this point, which require consideration.

The first is *Everson v. Board of Education,* 330 U. S. 1, 67 S. Ct. 504, 91 L. Ed. 711 (1947), where an Establishment Clause challenge was made to a New Jersey statute which provided for the reimbursement to parents of parochial school children, as well as to parents of public school children for the cost of bus transportation to and from school. The Supreme Court held that the statute would not violate the Establishment Clause. In the course of its opinion, the Court stated:

> "No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they be called, or whatever form they may adopt to teach or practice religion."

Although this language, read in isolation, might suggest that the Establishment Clause renders impermissible any

government aid to church-related educational institutions, such suggestion is dispelled by the Court's actual decision sustaining the statute. The Court so held even though it recognized the parochial schools received some benefit from state subsidization of bus transportation for parochial school children. The Court noted that a state could not exclude individuals *"because of their faith, or lack of it,* from receiving the benefits of public welfare legislation." Since it viewed state subsidization of bus transportation as a public welfare measure in the same category as such general government services relating to schools as police and fire protection, sewage disposal, public highways and sidewalks, it concluded that the challenged statute did not violate the Establishment Clause.

Abington Tp. School District v. Schempp, 374 U. S. 203, 83 S. Ct. 1560, 10 L. Ed. (2d) 844 (1963) fashioned a test for distinguishing between forbidden involvements of the State with religion and those contacts which the Establishment Clause permits:

> "The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be secular legislative purpose and a primary effect that neither advances nor inhibits religion."

It has often been observed that the barrier between government and religion is not easy to locate. The problem is one of degree with neutrality the principal guide and the final command. The search for the answer must be carefully undertaken to the end that the Authority as an agency of the State is not inadvertently forbidden from extending the assistance of the Act to the present and prospective student body of Baptist College at Charleston because of the religious association of its founders.

The third United States Supreme Court decision dealing with government aid to church-related education, is *Board of Education, etc. v. Allen,* 392 U. S. 236, 88 S. Ct. 1923, 20 L. Ed. (2d) 1060, (1968) which involved an Estab-

lishment Clause challenge to a New York statute authorizing the State to loan secular school textbooks to parochial school students. In determining the validity of the challenged statute, the Court utilized the secular purpose and primary effect test under which to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect which neither advances nor inhibits religion. Applying this test in *Allen* the Court upheld the statute on the ground that its stated legislative purpose clearly was secular and the primary effect of the loan of secular textbooks could not be said either to advance or inhibit religion. Although the challenged statute in *Allen* authorized aid to parochial school students and their parents, rather than to the schools themselves, the Court neither held nor suggested that the identity of the direct recipient of the aid was the critical factor in determining the constitutionality of the statute under the Establishment Clause. Moreover, the Court held that an indirect-direct aid approach would fashion an unacceptable test based on form rather that substance inasmuch as the contitutional result would depend on minute distinctions and technicalities. The *Allen* case, thus, confirms the secular purpose and primary effect test enunciated in *Schempp* as controlling with respect to the Establishment Clause validity of the Act.

Applying the secular purpose and primary effect test to the Act here in question, I find that it clearly meets the first requirement of a secular legislative purpose. The purpose of the Act appears on its face and has been alluded to above. The Act also meets the second requirement of a primary effect that it neither advances nor inhibits religion. The focus of this test as applied in *Allen* is the function with which the Act is concerned, secular or religious, and not the nature of the institution, secular or religious, which receives the assistance offered by the Act. The Supreme Court has long recognized that church-related educational intsitutions pursue two goals: secular education and religious instruction.

The history of church-related educational institutions in this Country reflects this dual function. Legislative, ju-

dicial, and prevailing social attitudes demonstrate beyond question that church-related educational institutions play a large and vital role in providing secular education. Legislative and judicial determinations have long established that a state's interest in secular education does not require that all children attend publicly operated schools; attendance at church-related schools satisfies state compulsory education laws provided the schools meet state secular education requirements. The Supreme Court summarized in *Allen* from the standpoint of the constitutional standard applied in that case, the relationship of the sectarian function to the secular education function of private schools, including parochial schools:

> "Underlying these cases, and underlying also the legislative judgments that have preceeded the court decisions, has been a recognition that private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience. Americans care about the quality of the secular education available to their children. They have considered high quality education to be an indispensable ingredient for achieving the kind of nation, and the kind of citizenry, that they have desired to create. Considering this attitude, the continued willingness to rely on private school systems, including parochial systems, strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that those schools do an acceptable job of providing secular education to their students. This judgment is further evidence that parochial schools are performing, in addition to their sectarian function, the task of secular education."

The Act before me as I construe it makes the projects available to all institutions for higher education without discrimination and without regard to any religious affiliation or identification with any particular denomination or church, but with regard to the secular nature of the project for which aids is sought. It is important that engaging in the program for construction of educational facilities

under the Act is entirely voluntary on all sides. I detect no element of preferential coercive treatment as to eligible institutions or as to those which may finance projects. I hold that the Act has a primary effect that neither advances nor inhibits religion and there is no suggestion that the cause of religion will be served or obstructed by the facilities to be constructed and financed.

It would be ironic indeed if the Legislature in enacting the Act so specifically intended and precisely written to comply with the constitutional standard of a secular legislative purpose and a primary effect that neither advances nor inhibits religion were to be striken down in the name of religious freedom. In short, I find no conflict between preservation of religious freedom and preservation of higher education. Without both, we may end up with neither.

I conclude, therefore, that Plaintiffs claim that the Act and the proposed actions of the Defendants for the construction of academic facilities impair his rights under the Establishment Clause is without merit.

For the reasons above set forth, the relief sought by the Plaintiff must be denied, as the holding of this Court is that the Act is a valid exercise of the legislative power of the General Assembly of South Carolina, and the Defendants constituting the Budget and Control Board and the Defendant Baptist College may proceed with the proposed issuance of revenue bonds pursuant to the Act.

AND IT SO ORDERED,

/s/ CLARENCE E. SINGLETARY
Resident Judge, Ninth Circuit.

Charleston, South Carolina,
May 1st, 1970.

EXCEPTIONS

The Plaintiff excepts to the Decree of Honorable Clarence E. Singletary dated May 1st, 1970 on the following grounds:

1. The Court below erred in holding that the issuance of the bonds pursuant to the Act and for the purpose of refunding outstanding obligations originally incurred by the Baptist College at Charleston serves a public rather than a private purpose, the error assigned being that only a private corporation will benefit from the issuance of the proposed revenue bonds inasmuch no new facilities will be provided.

2. The Court below erred in refusing to hold the Act invalid in that it permits a loan of the credit of the State for the benefit of a private corporation, the error assigned being that the revenue bonds to be issued pursuant to the Act will be sold upon the credit of the State and thus effectually lends the credit of the State to a private corporation.

3. The Court below erred in failing to hold the Act invalid on the grounds that the Act and the action of the Defendants pursuant thereto afford to a special class, *viz.*, those seeking the assistance under the Act, privileges and immunities not available to all classes or persons generally, the error assigned being that the Act and the actions of the Defendants pursuant thereto are in violation of the privileges and immunities provisions of Section 5 of Article I of the South Carolina Constitution.

4. The Court erred in holding that the option to purchase the project as defined in the Act for a nominal consideration and to renew the Lease at nominal rentals does not constitute an unlawful disposition of public property for less than the full market value, the error assigned being that such actions are violative of Section 31 of Article III and Section 5 of Article I of the South Carolina Constitution which forbid a sale of land to a corporation for a less price than that for which it can be sold to individuals and grant to the Baptist College at Charleston privileges and advantages not granted to others.

5. The Court below erred in holding that the proposed issuance of the bonds pursuant to the Act does not violate Section 9 of Article XI of the South Carolina Constitution, the error assigned being that the property and credit of the State of South Carolina is being donated, loaned, contracted, appropriated or otherwise used directly or indirectly in aid or maintenance of the Baptist College at Charleston, which is wholly or in part under the direction or control of a religious organization.

6. The Court below erred in holding that the issuance of the bonds under the Act does not violate Section 4 of Article I of the South Carolina Constitution and the First Amendment of the Federal Constitution, the error assigned being that the Act is legislation respecting an establishment of religion and prohibiting the free exercise thereof when used for the benefit of a sectarian institution as the Baptist College at Charleston.

ADDITIONAL SUSTAINING GROUNDS OF THE BAPTIST COLLEGE AT CHARLESTON

The Defendant Baptist College at Charleston urges as an additional sustaining ground of the Decree of the Lower Court the following:

That His Honor erred in holding that the Defendant Baptist College at Charleston is a College wholly or in part under the direction of control of a church or of a religious or sectarian denomination, society or organization, the error assigned being that the College operated by the Defendant Baptist College at Charleston is a nonsectarian institution of higher learning which has no restrictions upon its enrollment or faculty on the basis of religion and is attended by students of all religions.

AGREEMENT OF COUNSEL

It is agreed that the foregoing when printed shall constitute the Record of Appeal with Exceptions to the Supreme Court of South Carolina and that a copy thereof, signed by counsel, shall be filed with the Clerk of the Supreme Court as a return and that the case may be submitted to the Court without oral argument.

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SINKLER, GIBBS & SIMONS,
Attorneys for the Respondents

THE DECISION IN QUESTION
(Supreme Court of South Carolina)

The opinion of the Supreme Court of South Carolina filed March 2, 1972—South Carolina—, 187 S. E. (2d) 645, from herein is printed in the Jurisdictional Statement in No. 71-1523, pages 17 to 29, both inclusive.

THE STATUTE INVOLVED

Section 25 of Act No. 349 of the Acts of the General Assembly of 1969, the "Educational Facilities Authority Act," is printed in the Jurisdictional Statement in No. 71-1523, pages 33 to 44, both inclusive.

RULES AND REGULATIONS OF THE EDUCATIONAL FACILITIES AUTHORITY

The Rules and Regulations of the Educational facility Authority adopted September 2, 1971, and considered in the Decision in question are printed in the Jurisdictional Statement in No. 71-1523, pages 47 to 52, both inclusive.

STIPULATION AS TO FACTUAL CHANGES IN PROPOSED FINANCING

Stipulation of the parties setting forth the facts as they now exist with respect to the pending application of the Baptist College at Charleston to the State Budget and Control Board of South Carolina for the issuance of not exceeding $3,500,000.00 Education Facilities Authority Revenue Bonds pursuant to Section 25 of Act No. 349 of the 1969 Acts of the South Carolina General Assembly.

This action was instituted by the filing of the Complaint in the Charleston County Court of Common Pleas on March 20, 1970, contesting the constitutionality of the South Carolina Educational Facilities Authority Act (Section 25 of Act No. 349 of the 1969 Acts of the South Carolina General Assembly) and to enjoin the Defendants constituting the Budget and Control Board of the State of South Carolina from issuing bonds pursuant thereto; and, in particular, to enjoin the issuance of not exceeding $3,500,000 of bonds pursuant to the Act for the benefit of the Baptist College at Charleston. It was alleged in the Complaint and admitted by all parties that the proceeds to be derived from the sale of the proposed $3,500,000 bond issue were to be used (a) to refund outstanding indebtedness of the College in the amount of approximately $2,500,000, proceeds of which had been used to construct buildings on the College campus and to purchase equipment and for land improvement; (b) for reimbursing in part the College's Current Fund for monies advanced to the College's Plant Fund and used to purchase school equipment and for other capital improvements; and (c) to repay certain indebtedness of the Baptist College Foundation incurred for the

purpose of acquiring equipment and trailers utilized as a part of the College's educational plant.

Since this litigation was originally instituted, the College has effected on September 28, 1972, a permanent $2,500,000 bank loan, the proceeds of which have been used to fulfill the purposes set forth in (a) and (c) above, secured by a first mortgage upon approximately 30 acres of the College campus, including the following buildings located thereon:

The College does not propose to refund this $2,500,000 bank loan out of the proceeds of bonds issued pursuant to the Act. At the present time the College proposes that the Educational Facilities Authority (the Authority) issue only $1,250,000 of bonds pursuant to the Act, whose proceeds will be used, (i) to repay in full the College's Current Fund for the balance (approximately $250,000) advanced to the College's Plant Fund as aforesaid; (ii) to refund outstanding short-term loans in the amount of $800,000 whose proceeds were to pay off indebtedness incurred for *capital improvements,* and (iii) to finance the completion of the dining hall facilities at a cost of approximately $200,000.

The College will convey a portion of its campus to the Authority, exclusive of the properties now under mortgage to secure the permanent bank loan above described. The property so to be conveyed to the Authority will not include the physical education plant wherein are located facilities used for religious worship. As in the original proposal, the property so conveyed to the State will be leased back to the College at a rental sufficient to pay the bonds and the property so conveyed will be subject to the lien of a Trust Indenture to secure the bondholders.

Inasmuch as the College's original Petition to the Authority sought the issuance of **not exceeding** $3,500,000.00 of bonds pursuant to the Act, and the action of the Authority pursuant to the said Petition gave preliminary approval to the issuance of **not exceeding** $3,500,000.00 bonds pursuant to the Act "subject to the approval by the Authority of the final terms and conditions of the proposed financing and the terms and provisions of the Lease Agree-

ment and Trust Indenture to be used in connection therewith", the College, the Authority and the Appellant agreed that no further application is required at this time, and hat the preliminary approval heretofore given includes the preliminary approval of the issuance of not exceeding $1,250,000 of bonds pursuant to the Act which the College now seeks for the purposes set forth hereinabove.
Dated October 30, 1972.

WE AGREE TO THE FOREGOING:

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